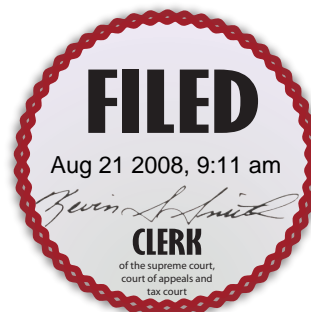


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DIANA SAYLOR,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0802-CR-167

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Paula Lopossa, Senior Judge

Cause No. 49F08-0610-CV-205337

August 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Diana Saylor appeals her conviction for Battery as a class A misdemeanor,¹ following a bench trial. On direct appeal, Saylor presents the following restated issue for review: Did the State present sufficient evidence to rebut her claim of self-defense?

We affirm.

The facts most favorable to the judgment are that Ralph Piper lived across the street from his mother-in-law, Irene Ricketts, and his sister-in-law, Saylor. On October 23, 2006, Piper's telephone rang and he answered it. He heard Ricketts and Saylor arguing with each other, but neither of them spoke to him on the phone, so he hung up the phone. His phone rang again several minutes later and when he picked it up, he again heard Saylor and Ricketts arguing on the other end of the line and neither spoke to him. This time, Piper decided to go to Ricketts's apartment and find out what was happening. Piper often went to Ricketts's apartment to make sure she was okay and she always allowed him to enter. When Piper arrived at her apartment, the door was unlocked and Piper entered. Inside, Piper found Ricketts sitting in a chair and Saylor sitting on a couch. Piper picked up a cane by the front door, struck it on the arm of the couch located at the opposite end from which Saylor was sitting and asked, "okay, what is going on?" *Transcript* at 10. Saylor stood up and Piper pointed the cane at her, with the end of the cane near but not touching her face, and told Saylor to sit down. She complied. Piper sat down in a chair and told Ricketts that he came because she had called him twice. He told Ricketts he could do nothing about Saylor and that if Ricketts had problems with Saylor, she should kick Saylor out of her apartment. Piper rose, walked to the door, put the cane back where he had found it, and prepared to leave. At

¹ Ind. Code Ann. § 35-42-2-1 (West, PREMISE through 2007 1st Regular Sess.).

that point, Saylor flipped a coffee table over, scattering objects that had been on the table across the floor. She then walked to Piper and hit him in the face and the chest. Piper went back to his home and called the Marion County Sheriff's Department.

Deputy Wayne Shelton responded to Piper's call. When he arrived on the scene, Deputy Shelton observed that Piper had a red, swollen lip and swelling above his left eyebrow. Deputy Shelton went to Ricketts's apartment to speak with Saylor. When he arrived, the deputy noted items scattered on the floor. Deputy Shelton spoke with Saylor and observed that she had three fresh cuts on one of her wrists, which he believed to be self-inflicted. After speaking with Saylor, Deputy Shelton arrested her for battery. Treating the arrest as an immediate involuntary psychiatric detention, Deputy Shelton transported Saylor to the hospital. Saylor was ultimately charged with battery as a class A misdemeanor in connection with this incident. She was found guilty following a bench trial.

Saylor contends the State failed to present sufficient evidence to disprove her self-defense claim. We review a challenge to the sufficiency of the evidence to rebut a claim of self-defense using the same standard as that used for any claim of insufficient evidence. *Pinkston v. State*, 821 N.E.2d 830 (Ind. Ct. App. 2004), *trans. denied*. In so doing, we neither reweigh the evidence nor judge the witnesses' credibility. *Id.* The conviction will not be disturbed if there is sufficient evidence of probative value to support it. *Id.*

A valid claim of self-defense is a legal justification for an otherwise criminal act. *Id.*; *see also* Ind.Code Ann. § 35-41-3-2(a) (West, PREMISE through 2007 1st Regular Sess.). To prevail on such a claim, the defendant must show he or she: (1) was in a place where he or she had a right to be; (2) did not provoke, instigate, or participate willingly in the violence;

and (3) had a reasonable fear of death or great bodily harm. *Pinkston v. State*, 821 N.E.2d 830. The amount of force that an individual may use to protect himself or herself must be proportionate to the urgency of the situation. *Id.* When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished. *Id.* When a claim of self-defense is raised and supported by the evidence, the State bears the burden of negating at least one of the necessary elements. *Id.* The State may satisfy its burden by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief. *Id.*

Saylor contends the State failed to rebut her claim of self-defense. Saylor notes that the encounter began when Piper entered Ricketts's house when he "did not have authority" to do so. *Appellant's Appendix* at 5. Saylor testified that she was scared when Piper struck the couch with the cane and pointed it near her nose. She claimed she was afraid he was going to hit her. Viewing the incident as a whole, however, Saylor's claim on appeal does not take into account the sequence of events. There is no dispute that Piper entered Ricketts's home, grabbed the cane, hit the couch with it, and stuck it near Saylor's face. There is also no dispute, however, that he then sat down, talked briefly with the women, got up and went to the front door, put the cane back, and was preparing to leave when Saylor turned over the coffee table and attacked him. In any event, all of these facts were before the fact-finder. It was the fact-finder's duty to determine whether Saylor was provoked such that the defense of self-defense was available to her. We will not second-guess its decision that Saylor's attack upon Piper was not "provoked" within the meaning of her proffered defense. Saylor offers no other challenge to the sufficiency of the State's evidence proving the elements of battery.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur